MHMT010000412019

Presented on : 09.01.2019
Decided on : 12.08.2026
Duration : **7Y/7 M/3 D**

Ex.

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, MUMBAI

(Presided over by Smt. Monica I. Arland)

Motor Accident Claims Petition No.683 of 2019

Smt. Poonam Sudhesh Behanwal,
nee Miss. Poonam Virpal Dhakoliya

Aged about 29 years

Residing at :
Old Barrack, 7/1,
Near Jay Bharat High School,
Mulund colony,
Mulund (West),
Mumbai-400 080. **... Applicant**

-**Versus**-

Shriram Dairy,
Prop. Pushpavati Janardhan Rao,
Residing at :
B/23/2, Sector 10,
Sanpada, Navi Mumbai-400 705. **... Opp. Party No.1**
(Owner of Motor Tempo No.MH-43-BB-1636)

- And -

The New India Assurance Co. Ltd.
Mumbai Legal HUB,
41-B, 4th floor, Maker Tower,
E' Wing, Opp. World Trade Centre,
Cuffe Parade, Mumbai-400 005. **... Insurer No.1**
Policy No.17010031170100004081.
Valid from 18.6.2017 to 17.06.2018.

- **And** -

Aakash Y. Singh
R.No.C3 Kala Niketan CHS,
Khindpada, LBS Marg,
Singh Niwas,
Mulund (W),
Mumbai-400 082. **... Opp. Party No.2**

- **And** -

Tata AIG General Insurance Co. Ltd.
2nd Floor, Unit Nos.SB143, 144-145 and 146,
High Court Cam. Highland Corporate,
Centre Kapurbawdi Junction,
Majiwada,
Thane-400 607. **... Insurer No.2**

Petition for compensation amount Rs.10,00,000/-

Smt. V.M. Triratne	- Advocate for applicant.
Opposite party No.1 & 2	- ex-parte
Smt. S. R. Virkar	- Advocate for Insurer No.1
Smt. A.M. Phadtare	- Advocate for Insurer No.2

JUDGMENT

(Delivered on this 12th August, 2026)

1. This petition has been filed by the applicant under Section 166 of the Motor Vehicles Act for grant of compensation of Rs.10,00,000/- from the Opposite parties and its Insurers.

2. According to the applicant, on 21.01.2018 at about 3:45 hrs., she was proceeding as a pillion rider on

motorcycle No.MH-03-CC-1737 from V.P. Road towards Mulund Station. When she reached near Taranagan Apartment, Namdeo Bhimji Gangurde Chowk, Mulund (W), at that time, the offending Tempo bearing No.MH-43-BB-1636 came in contact with applicant's motorcycle which was coming from Sevaram Lalwani road. Due to this impact, she fell down on the road and sustained serious injuries. After the accident she was taken to Mulund General Hospital on 21.01.2018 and immediately taken to Heera Mongi Navneet Hospital where she was treated from 21.1.2018 to 1.2.2018. She incurred Rs.6,00,000/- on medical treatment, special diet and conveyance and would incur future expenses.

3. The Police Station, Mulund taken the entry in the General Diary vide T.A.R. No.28 of 2018 on 21.01.2018.

4. At the time of accident, the injured was working with Child Health Foundation and was earning Rs.15,000/- per month. Therefore, she filed this petition and claimed compensation of Rs.10,00,000/- from the opposite party and its insurer.

5. The opposite party No.1 and 2 though duly served through publication vide Ex.12 and Ex.31 but did not appear and contest the matter. Therefore, the matter was proceeded ex-parte as against the opposite party No.1 and 2.

6. The Insurer No.1-New India Assurance Co. Ltd. has filed the written statement vide Ex.14 and resisted the claim of the applicant. It is contended that, the application is hit by the provisions of non-joinder of parties as the applicant did not implead the driver of offending vehicle No.MH-12-BB-1636. It is further contended that the application suffers for misjoinder or non-joinder of necessary party as the owner, driver and insurer of the vehicle No.MH-03-CC-1737 are not impleaded as the necessary party to the claim application. It is contended that there is TAR and no FIR is registered,therefore the police authorities have not carried out investigation so also the claim filed is after thought to extract money from the Insurer. It is also contended that there is no nexus between the injury and the accident. It is further contended that the driver of the offending vehicle was not having valid and effective driving licence, fitness certificate and valid route permit on the date of accident and therefore there is a breach of the terms and conditions of the insurance policy. Hence, prayed for dismissal of the application.

7. The Insurer No.2- Tata AIG General Insurance Co. Ltd. has filed the written statement vide Ex.26 and resisted the claim of the applicant. It is contended that the accident took place on 21.01.2018 and the vehicle No.MH-03-CC-1737 was insured with it vide Policy Certificate/ Cover Note No.0159730810 for the period from 30.4.2019 to 29.04.2020 which clearly shows that on the date of

accident, the vehicle no.MH-03-CC-1737 was not insured with it. It is also contended that the application is hit by the provisions of non-joinder of necessary party as the applicant did not implead the rider of vehicle No.MH-03-CC-1737 as a party to the proceeding.

8. It is the contention of the learned counsel for the Insurer that the accident took place due to sole negligence of the driver of vehicle No.MH-43-BB-1636 and not due to the negligence of the driver of vehicle No.MH-03-CC-1737. It is further contended that the driver of the vehicle No.MH-43-BB-1636 was not holding valid and effective driving licence to drive any type of vehicles. It is contended that it is a case of composite negligence of the driver of the vehicle No.MH-43-BB-1636. Hence, prayed for dismissal of the application.

9. I have framed the Issues vide Ex.32 on 18.2.2026. I record my finding thereon for the reasons given below.

Sr. No.	Issues	Findings.
1.	Whether the applicant proves that, the vehicular accident occurred on 21.01.2018 at about 03:45 hrs., on V.P. Road, near Tarangan Apartment, Namdeo Bhimji Gangurde Chowk, Mulund (E), Mumbai due to rash and negligent driving of the respective drivers of vehicles i.e. Tempo bearing No.MH-43-BB-1636 and	**Partly Affirmative to the extent of vehicle No.MH-43-BB-1636**

	motorcycle No.MH-03-CC-1737, in which she sustained severe injuries/disability ?	
2.	Whether the Insurer No.1 proves that there is breach of the terms and conditions of the insurance policy?	**Negative**
3.	Whether the Insurer No.2 proves that alleged vehicle No.MH-03-CC-1737 was not insured with the insurer on the date of accident?	**Affirmative**
4.	Whether the Insurer No.2 proves that there is breach of the terms and conditions of the insurance policy?	**Negative**
5.	Whether the applicant is entitled to get compensation and if yes, from whom and to what extent?	**Yes, Rs.7,63,319/- from opposite party No.1 and Insurer No.1**
6.	What order ?	**As per final order**

R E A S O N S

As to Issue No.1:-

10. In order to prove the contentions made in the petition, the applicant has examined herself vide Ex.33 who proved the documents Ex.36 to Ex.47. She also examined Dr. Naresh Khanna (AW2) vide Ex.47 who proved disability Certificate Ex.48.

11. On the other hand, the TATA AIG General Insurance Company has examined Mr. Hemant Madhukar Bhosale (DW1) vide Ex.53 to prove its defence. He proved documents Ex.56 to Ex.58.

12. Perused the record. Heard Smt. V.M. Triratne, the learned counsel for the applicant, Smt. Shilpa Virkar, the learned counsel for the Insurer No.1 and Smt. A.M. Phadtare, the learned counsel for the Insurer No.2.

13. Perused the written notes of arguments filed by the applicant and Insurer No.1 vide Ex.65 and Ex.67 respectively.

14. It is argued by learned counsel for the applicant that the accident took place on 21.01.2018 at about 03:45 hrs. while the applicant was proceeding as a pillion rider on motorcycle No.MH-03-CC-1737 from V.P. Road towards Mulund Station. When she reached near Tarangan Apartment, Namdeo Bhimaji Gangarde Chowk, Mulund (West), at that offending Tempo bearing No.MH-43-BB-1636 came in contact with applicant's motorcycle coming from Sevaram Lalwani road. Due to this impact, she fell down on the road and sustained serious injuries. After the accident she was given first aid at Mulund General Hospital on 21.01.2018 and immediately taken to Heera Mongi Navneet Hospital wherein she was treated from 21.1.2018 to 1.2.2018. The ORIF was done on 23.1.2018.

15. It is also argued that the accident occurred due to sole negligence of the driver of the motorcycle and tempo. It is further argued that the applicant sustained following injuries in the accident :

1) Displaced comminuted left iliac blade fracture
2) fracture of right ischiopubic ramus
3) fracture of left clavicle
4) fracture of mandible and maxilla
5) bleeding from nose, severe facial pain, abrasion and cut injury to lips and nose area.

16. It is argued that Police Station, Mulund taken the entry in the General Diary vide T.A.R. No.28 of 2018 on 21.01.2018.

17. In support of the contentions, the Learned Counsel for the applicant has referred and relied on the following citations:

- **Kaushnuma Begum V/s. New India Assurance 2001(2) SCC 9 (S.C.)**
- **New India Assurance V/s. Nakka Venkat Rao 2001(5) SCC 409 (S.C.)**
- **United India Insurance Co. Ltd. V/s. Shila Datta 2011(10) SCC 509**
- **Raj Kumar V/s. Ajay Kumar 2011(1) SCC 343(S.C.)**
- **Khenyei V/s. New India Assurance 2015(9) SCC 273**

18. Per contra, it is argued by the Learned Counsel for the Insurer No.1 that there is TAR and no FIR was registered, hence, police authorities have not carried out investigation. It is also argued that the applicant has stated in her statement dated 21.01.2018 given to police

authorities stating that she is not having any complaint against her brother who was riding the motorcycle bearing No.MH-03-CC-1737 so also the driver of Motor Tempo bearing No.MH-43-BB-1636. It is further argued that the applicant has not examined any independent eyewitness to prove the version of accident so also the rashness and negligence of the driver of offending motor Tempo bearing No.MH-43-BB-1636.

19. In support of the contentions, the learned counsel for the Insurer No.1 has referred and relied on the following citations:

- **M/s. Shriram General Insurance Co. Ltd. Vs. Chandrakala Atmaram Mohite and others, F.A.No.02757/2017, decided on 26.09.2019 by the Hon'ble High Court of Judicature at Bombay, Aurangabad Bench.**
- **Oriental Insurance Co. Ltd. Vs. Premlata Shukla and ors, [2007 AIR SCW 3591]**
- **Surnder Kumar Arora & Anr. Vs Dr. Manoj Bisla & Ors., [2010 AIHC 2916 (Del.)]**
- **National Insurance Co. Ltd. Vs. Nandabai Prakash @ Pralhad Dhumal, F.A. No.1565/2012, decided on 04.07.2017 (Bom.)**

20. It is argued by the Learned Counsel for the Insurer No.2 that the accident took place on 21.1.2018 and the Applicant has filled RTO documents wherein the period

of insurance is mentioned from 30.4.2029 to 29.4.2020, which clearly shows that there was no insurance coverage on the alleged date of accident. However the said motor cycle upon which the applicant was proceeding as a pillion rider was belonging to her brother.

21. It is also argued that Hemant (DW2) was examined wherein in Exh.62 which is the Vehicle Particulars of motor cycle bearing registration No.MH-03-CC-1737 it is clearly mentioned that the said vehicle was insured with it from 30.4.2019 to 29.4.2020.

22. In support of the contentions, the Learned Counsel for the Insurer No.2 has referred and relied on the following citation :

- **Bajaj Allianz Gen. Ins. Co. Ltd. Vs. Pushpa and Ors., [2015 ACJ 1824 (Bom.)]**

23. Poonam (AW1) has testified vide Ex.33 and she reiterated about the incident. According to her, on 21.01.2018 at about 03:45 hrs., she was proceeding as a pillion rider on motorcycle No.MH-03-CC-1737 from V.P. Road towards Mulund Station. When she reached near Tarangan Apartment, Namdeo Bhimji Gangurde Chowk, Mulund (West), at that time the offending Tempo bearing No.MH-43-BB-1636 suddenly came in high and excessive speed and gave dash to the motorcycle. Due to this impact, she fell down on the road and sustained serious injuries. After the accident she was taken to Mulund General

Hospital on 21.01.2018 and on the same day shifted to Heera Mongi Navneet Hospital wherein she was treated from 21.1.2018 to 1.2.2018.

24. She further deposed that she sustained following injuries in the accident: a) Displaced comminuted fracture left illac, b) Abrasion & Cut injury to the lips side and nose area, c) Fracture right ischiopubic ramus, d) Fracture left clavicle, e) Fracture Mandible, f) Fracture maxilla, g) bleeding from nose, sever pain over face.

25. She deposed the the Police Station, Mulund has taken the entry in the General Diary vide T.A.R. No.28 of 2018 on 21.01.2018.

26. She was cross examined at length from the side of Insurer No.1 & 2. She admitted that two vehicles were involved in the accident.

27. At the outset, it is to be seen as to whether the applicant sustained grievous injuries/permanent disability in the accident which took place on 21.01.2018 at about 03:45 hrs., while she was proceeding on a motorcycle bearing No.MH-03-CC-1737 as a pillion rider. In this respect, the police papers are required to be scrutinized. The copy of General Diary Details is filed on record at Exh.36. On perusal of the General Diary Details, it can be seen that the complainant Mr. Suraj Yashpal Singh stated that on 21.01.2018 at about 03:50 hrs., while he was riding

his Motor Scoohter No.MH-03-CC-1737 and proceeding towards Mulund Station, he came in contact with Motor Tempo No.MH-43-BB-1636 and his scooter got damaged.

28. In this regard it is to mention that the Tribunal can grant compensation if the FIR is not registered, provided there is a Traffic Accident Report or other credible evidence of the accident. However, the Motor Vehicles Act, 1988 does not make filing of an FIR a mandatory pre-condition for claiming compensation and what is required is proof of the accident, involvement of the vehicle and resulting injury/death/damage. Moreover, the TAR is a document which contains the essential details like accident spot, vehicle details, driver details, insurer particulars, etc.

29. Furthermore, there are catenas of judgment of the Hon'ble Apex Court and of the Hon'ble High Court wherein it is clarified that Motor Accident Claims Tribunal is not bound by strict rule of evidence like Civil Procedure Code or Criminal Procedure Code. It can rely on police records, TAR, chargesheet, MLC and even oral testimony. The non-registration of FIR cannot defeat a genuine compensation claim and the Motor Accident Claims Tribunal is a welfare forum created to ensure speedy relief to victims of road accident. Therefore, the technicalities like absence of FIR should not prevent compensation and non-filing of the FIR cannot be treated as fatal to a claim

petition if other evidence like Accident Information Report/TAR is available.

30. Furthermore, the proceedings of Motor Accident Claims Tribunal are summary in nature and their purpose is to provide just and fair compensation to victims of accident. Therefore, the FIR is only corroborative and not mandatory.

31. It is pertinent to note that the record shows that no FIR came to be registered in respect of the accident. However, a Station Diary entry vide No.28/2018 was recorded by Police Station, Mulund, immediately which has been duly filed and proved by the applicant Poonam (AW1) vide Ex.36. The Station Diary Entry at Exh.36 specifically mentions that a Motor Tempo bearing No.MH-43-BB-1636 dashed the motorcycle bearing registration No.MH-03-CC-1737. The said entry also attributes negligence attributed by Motor Tempo bearing registration No.MH-43-BB-1636 which is a contemporaneous document and can be taken into consideration along with the oral evidence and other material available on record. Moreover in the TAR vide Ex.36 there is no whisper about any negligence attributed by the rider of the Motor Cycle bearing Registration No. MH-03-CC-1737. In absence of any cogent and reliable oral as well the documentary evidence it would be difficult to believe that the rider of the Motor Cycle bearing Registration No. MH-03-CC-1737 also contributed in the occurrence of the alleged accident.

32. On going through the evidence, documents filed on record and the submissions of applicant, it appears that the accident took place on 21.01.2018 at about 03:45 hrs. on V. P. Road, near Tarangan Apartment, Namdeo Bhimji Gangurde Chowk, Mulund (E), Mumbai due to dash of Motor Tempo bearing registration No.MH-43-BB-1636 to the Motorcycle bearing No.MH-03-CC-1737 upon which the applicant was proceeding as a pillion rider wherein she sustained the injuries.

33. All these documents duly corroborate the evidence adduced by the applicant to show that on 21.01.2018 due to dash of Motor Tempo bearing registration No.MH-43-BB-1636 owned by the opposite party No.1, the applicant sustained injuries. Therefore, I answer Issue No.1 in partly affirmative to the extent of the negligence of the driver of the Motor Tempo bearing registration No.MH-43-BB-1636.

<u>As to Issue No.2 :</u>

34. The Insurer No.1 - the New India Assurance Co. Ltd. has contended that the claim petition is bad for non-joinder of necessary parties and that there is a breach of policy conditions as the driver of the offending Tempo bearing registration No.MH-43-BB-1636 was not holding a valid and effective driving licence on the date of the accident.

35. In this regard, it is pertinent to note that the record reveals that the applicant has initially impleaded the owner and insurer of the offending Tempo bearing registration No.MH-43-BB-1636 and thereafter by way of amendment also impleaded the owner and insurer of the Motorcycle bearing No.MH-03-CC-1737 upon which the applicant was travelling as a pillion rider. Thus, all the persons who could possibly be affected by the adjudication of liability have been brought on record by way of amendment and are impleaded in the matter therefore, it cannot be considered that the petition is bad in law for non-joinder of necessary parties.

36. It is the defence of the Insurer No.1 that the driver of offending Tempo No.MH-43-BB-1636 was not holding valid and effective driving licence to drive the vehicle, therefore, there is a breach of the terms and conditions of the insurance policy. Hence, the insurer is not liable to pay any compensation to the applicant.

37. Though, it is contended by the Insurer No.1 but on scanning of the oral as well the documentary evidence, there is no iota of evidence which leads to show or from where an inference can be drawn that there was a breach of policy condition and the insurer No.1 is not liable to pay the compensation to the applicant.

38. In absence of any cogent, reliable and trustworthy oral as well documentary evidence from the side of the insurer, it would be difficult to consider that there was a breach of policy condition and the insurer No.1 is not liable to pay the compensation to the applicant. Hence, I answer Issue No.2 in negative.

As to Issue No.3 :-

39. The Insurer No.2/Opposite Party No.4, Tata AIG Gen. Insurance Co. Ltd. has contended that the Motorcycle bearing registration No.MH-03-CC-1737 upon which the applicant injured was travelling as a pillion rider was not insured with it on the date of the accident i.e. on 21.01.2018. According to Insurer No.2/Opposite Party No.4, the said motorcycle is insured with it for the period from 30.04.2019 to 29.04.2020 and therefor, it is not liable to indemnify the owner of the motorcycle for the present accident.

40. In order to substantiate its defence, the insurer No.2/Opposite Party No.4 examined Hemant (DW1) vide Exh.53. He deposed that the motorcycle bearing registration No.MH-03-CC-1737 was not insured with Tata AIG Gen. Insu. Co. on the date of the accident i.e on 21.01.2018 and that the insurance policy produced on record was valid only for a period from 30.04.2019 to 29.04.2020. The insurance policy vide Exh.57 and the

relevant record relied upon by the witness support his testimony. Nothing substantial has been elicited in his cross examination to discredit his evidence or to show that the said motorcycle was covered by any policy issued by the Insurer No.2/Opposite party No.4 on the date of alleged accident i.e. 21.01.2018. The evidence of Hemant (DW1) therefore, inspires confidence and establishes that there was no subsisting contract of insurance between the owner of the motorcycle and the Insurer No.2/opposite party No.4 on the date of accident i.e. on 21.01.2018.

41. In view of the aforesaid evidence, I hold that insurer No.2/Opposite Party No.4 - Tata AIG General Insurance Co. Ltd. has successfully proved that the motorcycle bearing registration No.MH-03-CC-1737 was not covered under any policy issued by it on the date of the accident. Consequently, the Insurer No.2/Opposite Party No.4 cannot be fasten with any statutory or contractual liability to indemnify the owner of the motorcycle in the present claim petition, and the claim against Insurer No.2/Opposite Party No.4 deserves to be dismissed. Hence, I answer Issue No.3 in the affirmative.

<u>As to Issue No.4</u> :-

42. It is the defence of the Insurer No.2 that the driver of offending vehicle No.MH-03-CC-1737 was not holding valid and effective driving licence at the time of accident, therefore, there is a breach of the terms and

conditions of the insurance policy.

43. Though, it is contended by the Insurer No.2, but on scanning of the oral as well the documentary evidence, there is no iota of evidence which leads to show or from where an inference can be drawn that there was a breach of policy condition.

44. Moreover, no evidence is led by the Insurer No.2 in order to prove the said contention which is raised as a defence in the matter either by oral or the documentary evidence. In absence of any cogent, reliable and trustworthy oral as well documentary evidence from the side of the Insurer No.2, it would be difficult to consider that there was a breach of policy condition. Hence, I answer Issue No.4 in negative.

As to Issue Nos. 5 & 6 :

45. So far as quantum of compensation is concerned, it is contended by applicant that she had sustained fracture injuries which resulted in 58 % of partial permanent disability.

46. It is argued by the learned counsel for the applicant that the applicant has sustained injury in the accident dated 21.01.2018 wherein she was treated at Hira-Mongi Navneet Hospital, Mulund from from 21.01.2018 to 01.02.2018. Moreover, she spent Rs.30,000/- towards conveyance, Rs.50,000/- towards special diet and

Rs.3,35,319/- towards hospitalization and medicines.

47. It is also argued that Dr. Naresh Khanna (AW2), the Orthopedic Surgeon had issued the disability certificate which is duly proved vide Exh.48. It is further argued that at the time of accident the applicant was working with Child Health Foundation and earning Rs.15,000/- p.m. However, due to prolonged medical confinement and physical incapacity she was unable to perform her job and thereby suffered loss of income for one year to the tune of Rs.1,80,000/-. Therefore the applicant is entitled for loss of income. Furthermore, she is entitled for all pecuniary as well as non-pecuniary expenses.

48. Per contra, it is argued by the learned counsel for the Insurer No.1/New India Assurance Co. Ltd that the testimony of Dr. Khanna (AW2) is not trustworthy and it cannot be relied upon as he is not the treating doctor. Furthermore, there is no permanent disablement sustained by the applicant and the treating doctor is not examined in the matter.

49. The applicant Poonam (AW1) testified that after the accident she had taken treatment at Hira Mongi Hospital, Mulund from 21.01.2018 to 01.02.2018. She also deposed that she sustained following injuries :

1) Displaced comminuted left iliac

2) Abrasion and cut injury to the lips and nose area

2) fracture of right ischiopubic ramus
3) fracture of left clavicle
4) fracture of mandible and maxilla
5) bleeding from nose, severe pain.

50. She testified that she has incurred Rs.3,53,319/- towards medicines and hospitalisation. She also testified that she spent Rs.30,000/- towards conveyance and Rs.50,000/- towards special diet.

51. She further testified that she had consulted Dr. Naresh Khanna (AW2) who has issued the disability certificate with the assessment of 58% permanent partial disability. She has filed and proved the Discharge Card of Hira Mongi Navneet Hospital vide Exh.41, Prescription of Dr. Aditya vide Exh.42, Radiology Report of CT Scan vide Exh.43, hospital bills vide Exh.45, Diagnostic Center Bills vide Exh.46 and medical store bills vide Exh.47.

52. She was cross examined at length from the side of the Insurer No.1 & 2 on the point of sustaining injury, treatment, hospitalization and incurring of expenses. She admitted that after 2018, she was never admitted in the hospital . However, volunteered that she regularly went for treatment as the rod was implanted. She also admitted that she has not filed any document of treatment after 2018 till 2026. She denied that she received amount under medi-claim policy.

53. To prove the disability the applicant examined Dr. Naresh Khanna (AW2) vide Ex.47. He deposed that he had examined the applicant injured Poonam on 28.06.2022 and have assessed the partial permanent disability to the extent of 58% wherein the applicant had narrated that the accident took place on 21.01.2018 whereby she had taken treatment in Hira-Mongi Navneet Hospital, Mulund from 21.01.2018 to 01.02.2018. According to him, he had perused the hospital papers which were brought by Poonam (AW1), the applicant.

54. It is also his evidence that on examination he had observed the following injury :

a) Displaced comminuted fracture left illac,

b) Abrasion & Cut injury to the lip side and nose area,

c) Fracture right ischiopubic ramus,

d) Fracture left clavicle,

e) Fracture Mandible,

f) Fracture maxilla,

55. It is his further evidence that on examination, the following disabilities were found:

a) Tenderness, Deformity, scaring of left shoulder, mandible, maxilla and pelvis.

b) Movements of left hip, left shoulder are painful and restricted.

c) Unable to do day to day activities.

d) Unable to life objects with left hand

e) Unable to squat, stand or walk for long distance

56. He deposed that fracture of mandible, maxilla, left clavicle, left illeum, right pubis are consolidated clinically and radiologically. He also deposed that the applicant will require future medical treatment and physiotherapy so also for removal of implant he estimated the expenses to Rs.50,000/-.

57. He deposed that he assessed the partial permanent disability of the applicant to the extent of 58%. He proved the disability certificate vide Exh.48.

58. He was cross examined at length from the side of Insurer No.1 & 2 on the point of examination of the applicant injured before issuance of disability certificate, assessment of partial permanent disability to the extent of 58 % and fitness of the applicant to perform her routine. However, he denied the adverse suggestions put-forth to him in respect of issuance of false disablement certificate of the applicant injured.

59. On scanning of the oral as well as the documentary evidence, it can be seen that the accident took place on 21.01.2018 and the applicant was treated at Hira-Mongi Navneet Hospital, Mulund from 21.01.2018 to 01.02.2018.

60. In **Raj Kumar Vs Ajay Kumar [2011 ACJ 1 (SC)]**, the principle of assessment, determination of loss of future earning of the injured with reference to the extent of his

permanent disablement, quantum and injury is discussed at length. However, the following are the principles which are enumerated as under:

> "(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
> (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).
> (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.
> (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

61. Moreover the partial permanent disability is also discussed in the said case wherein it refers to a person’s inability to perform some of the duties and bodily functions that one could perform before the accident.

62. The disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 (`Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

63. The duty is cast upon the Tribunal to award just which means that compensation should to the extent possible fully adequately restored the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. A Court or Tribunal have to assess the damages objectively and excludes from consideration any speculation or fancy though some conjectures with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury but also for the loss which is suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injury and his inability to earn as much as he used to earn or could have earned.

64. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particularly, the extent of disability. However, section 168 and 169 of the Motor Vehicles Act make it evident that a Tribunal does not function as a

neutral empire as in a civil suit, but as an active explorer and seeker of truth who is required to ‘hold an enquiry into the claim’ for determining the ‘just compensation’. The Tribunal should therefore take an active role to ascertain the true and correct position so that, it can assess the ‘just compensation’. The Tribunal should also act with caution if it proposed to accept the expert evidence of doctors who did not treat the injured but who give `ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate.

65. Here in the present matter, the applicant has examined Dr. Naresh Khanna (AW2) for proving the disablement certificate which is issued by him vide Ex.48. However, on scanning of the oral evidence adduced by

Dr. Khanna (AW2), it can be seen that on 28.06.2022, he had examined the applicant, Poonam (AW1) almost after 4 years and assessed her partial permanent disability at 58% on the basis of history narrated by the applicant Poonam (AW1) for the accident which had taken place on 21.01.2018. His evidence is very clear on the point of treatment of Poonam (AW1) who had taken treatment in Hira-Mongi Navneet Hospital from 21.01.2018 to 01.02.2018. There is no iota of evidence which leads to show or from where, an inference can be drawn that the said doctor had any occasion to treat the applicant for the injuries which is alleged to have been sustained due to the said vehicular accident. In absence of any evidence to the effect of the treatment, it would be difficult to believe and consider the assessment to the tune of 58% partial permanent disability assessed by Dr. Khanna (AW2).

66. Furthermore, mere production of a disability certificate issued by a doctor who is a private practitioner cannot be considered as proof to the extent of disability stated therein unless, the doctor who treated the applicant who medically examined and assessed the extent of disability of the applicant is tendered for cross examination with reference to the certificate. Moreover, the Discharge Card of Hira-Mongi Hospital Exh.41 which is duly proved by the applicant Poonam (AW1) discloses only about the history, diagnosis and operative details wherein there is no mention about any disablement or likelihood of any

disablement in future because of the injuries sustained by the applicant in the accident.

67. In absence of any evidence in respect of the any likelihood of disablement in future the testimony of Dr. Khanna (AW2) cannot be considered as it lacks credence. Therefore, it can not be considered that the applicant has sustained partial permanent disablement which has been assessed by Dr. Khanna (AW2) to the extent of 58%.

68. The applicant has claimed Rs.3,00,000/- towards pain and suffering, Rs.1,00,000/- towards loss of amenities of life, Rs.3,53,319/- towards medical expenses, Rs.50,000/- towards special diet, Rs.30,000/- towards conveyance, Rs.1,80,000/- towards loss of income. However, the applicant has filed medical bills worth Rs.3,53,319/- on record to substantiate her contention.

69. Moreover, as per the pleading of the applicant, she was working with Child Health Foundation and earing Rs.15000/- per month.

70. It is to mention that if the disablement certificate is not proved in the Motor Accident Claim Petition or similar injury compensation case, it significantly impact the computation of compensation, especially under the head of 'disability'. However, without a valid, proved disablement certificate (usually issued by a competent

medical board), the Court can not assume or rely on any claimed percentage of disability. Moreover, the Court can still award compensation, but it must be based on actual, proven damages such as medical expenses, pain and suffering, loss of income during treatment, loss of amenities, conveyance, special diet and attendant charges.

71. Furthermore, in absence of proved disablement certificate based on the overall facts and circumstances of the case, the Tribunal can award lump sum compensation.

72. Here in the present matter, the applicant could not demonstrate or prove the exact disability percentage, the injuries, though not certified as permanent, the pain, suffering and the hardship and there is a lack of precise evidence to apply the multiplier method, but the injury is still significant, therefore, considering the nature of injuries sustained by the applicant, in my opinion, the applicant is entitled for lump sum compensation which is reasonable, fair and just.

73. The applicant has pleaded that at the time of accident dated 21.01.2018 she was aged about 29 years and was working with Child Health Foundation and earning Rs.15,000/- per month. In her affidavit-in-lieu of examination-in-chief she has reiterated the said assertion. However, no cogent, oral or documentary evidence has been produced to establish either her occupation or her

monthly income. The employer from Child Health Foundation has not been examined, no appointment letter, salary certificate, salary slip, attendance record, Bank statement reflecting credit of salary, or any other documentary evidence has been produced on record.

74. The burden of proving occupation and income lies upon the claimant. Mere averments in the pleadings and in the affidavit without independent corroboration are insufficient to establish the claimed income. Consequently, the Tribunal is not inclined to accept the contention that the applicant was earning Rs.15,000/- per month at the time of the accident.

75. Nevertheless, considering that the applicant was 29 years of age on the date of the accident and was capable of undertaking gainful employment and having regard to the prevailing wages and earning capacity in the year 2018, the Tribunal deem it appropriate to assess her income on notional basis. Accordingly, for the purpose of determining compensation, the monthly income of the applicant is assessed at **Rs.10,000/-** per month which would be a reasonable estimate in the absence of satisfactory proof of actual earnings.

76. The medical document i.e. Discharge Card of Hira-Mongi Hospital, filed and relied upon by the applicant vide Exh.41 reveals that the claimant sustained fracture injuries for which she was operated in the said

hospital on 23.0.1.2018. Though the disability certificate is not proved, the factum of sustaining injury surgical intervention stands established from the Discharge Card vide Exh.41. Hence, the injury sustained by the claimant is required to be treated as grievous in nature.

77. In view of the said injury and surgical treatment, it can be reasonably inferred that the claimant would have been incapacitated from attending her work for a considerable period. Accordingly, the loss of income during treatment and recovery period is assessed for 3 months. Thus, the claimant is entitled to **Rs.30,000/-** (Rs.10,000/- p.m. x 3 months) towards loss of income.

78. Considering the nature of injuries, surgery, pain, trauma and period of treatment, the claimant is awarded **Rs.1,00,000/-** towards pain and suffering.

79. To substantiate the expenses incurred by the applicant for her medical treatment, she has filed and proved the Hospital bills and medicine bills vide Exh.45 to 47 for total amount of Rs.3,53,319/-. Hence, the claimant is awarded **Rs.3,53,319/-** towards medical expenses.

80. Further, the claimant would have incurred expenses towards conveyance and special diet during the course of treatment and recovery. Therefore, a consolidated amount of **Rs.80,000/-** is awarded under these heads.

81. In addition to this, the applicant is also entitled for **Rs.1,00,000/-** towards loss of functional disability and **Rs.1,00,000/-** towards loss of amenities of life.

82. Thus, the applicant is entitled for total compensation of **Rs.7,63,319/-** which is just, fair and reasonable.

83. It is already held that the offending Tempo No.MH-43-BB-1636 was owned by the opposite party No.1 and insured with Insurer No.1 on the date of accident and is responsible for the accident in which the applicant sustained injuries.

84. The applicant has filed the copy of insurance policy of Motor Tempo bearing registration No.MH-43-BB-1636 vide Ex.37 which discloses that it was insured with the Insurer No.1 - New India Assurance Co. Ltd. vide policy No.17010031170100004081 valid from 18.06.2017 to 17.06.2018. The accident took place on 21.01.2018 due to dahs by the offending Motor Tempo bearing registration No.MH-43-BB-1636. It means at the time of accident, the offending vehicle was duly insured with the Insurer No. i.e. New India Assurance Co. Ltd., therefore, it is liable to indemnify the Opposite party No.1.

85. I have gone through the ruling cited and relied upon by the applicant, and the Insurer No.1 & 2. Except the ruling of **Raj Kumar Vs. Ajay Kumar and other, [2011 ACJ 1**

(SC)], cited by the learned counsel for the applicant, other rulings are not helpful as the facts and circumstances of the cases cited supra are different from the case in hand.

86. The applicant has claimed interest @12% p.a. on the compensation amount. It is the general principle that in the petition under Motor Vehicles Act, interest should be granted equal to the rate of interest on fixed deposits of Nationalised banks. Therefore, I think it proper to grant interest at the rate of 7.5% per annum on the amount of compensation from the date of application. Hence, I answer Issue No.5 accordingly and pass the following order.

-: O R D E R :-

1. The petition is hereby partly allowed with proportionate costs against the Opposite party No.1 and Insurer No.1.

2. The claim of Applicant against the Opposite Party No.2 and Insurer No.2 is hereby dismissed.

3. Opposite party No.1 and the Insurer No.1 shall jointly and severally pay **Rs.7,63,319/- (Rupees Seven Lakh Sixty Three Thousand Three Hundred Nineteen only)** towards compensation to applicant along with interest

@ 7.5% per annum from the date of application till its full realization.

4. Amount of Rs.25,000/-, if any, granted towards no fault liability to the applicant shall be adjusted from the above said amount of compensation.

5. Opposite party No.1 and Insurer No.1 are directed to deposit the awarded amount directly in the below stated Bank Account of the applicant, by NEFT/RTGS and submit compliance report of the same to the official email address of this Tribunal.

6. The details of the bank account of the applicant with **Indian Overseas Bank, Fort Branch, Mumbai** is as under :

Sr. No.	Name of the applicant	Account No.	IFSC
1.	Poonam Sudesh Behanwal	001401000109455	IOBA0000014

7. The applicant is hereby directed to deposit deficit court fees, if any, within 15 days from the date of award.

8. Award be drawn up accordingly.

MONICA INOK ARLAND
Digitally signed by MONICA INOK ARLAND
Date: 2026.08.13 13:01:53 +0530

[M. I. Arland]
CHAIRMAN
MACT, Mumbai

Date : 12/08/2026
GDE